

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 523 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 478 OF 2015

Saurashtra Power Private Limited

... Transferor Company
/ Petitioner Company

In the matter of the Companies Act 1 of
1956 (or re-enactment thereof upon
effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of
the Companies Act, 1956 (or any
corresponding provision of Companies
Act, 2013 as may be notified);

AND

In the matter of the Scheme of
Amalgamation of Saurashtra Power
Private Limited (SPPL)

WITH

Saurashtra Infra and Power Private
Limited (SIPPL)

AND

their respective shareholders and
creditors

Called for Hearing

Ms. Shruti Kelji, Advocate for the Petitioner.

Mrs. Anjali Helekar, i/b. A. A. Ansari for the Regional Director.

Mr. S. Ramakantha, Official Liquidator present.

Coram : S. C. Gupte, J.

Date : 9th October, 2015

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petition`.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Saurashtra Power Private Limited (SPPL), Transferor Company with Saurashtra Infra and Power Private Limited (SIPPL), Transferee Company.
3. Learned Advocate for the Petitioner Company states that the Transferor Company and Transferee Company are engaged in the process of setting up waste heat power project at Mundra, Gujarat.
4. The proposed scheme of amalgamation of the Transferor Company with Transferee company will have the benefit of consolidation of business operations of the Transferor Company and Transferee Company by way of amalgamation would lead to a more efficient utilization of resources and create a stronger base for future growth of the amalgamated entity and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization and cost savings are expected to flow more focused operational efforts, rationalization and standardization of administrative expenses.
5. The Learned Advocate for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of Transferee Company viz. Saurashtra Infra and Power Private Limited and no new shares are being issued and there will be no change in capital

structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of the Transferee Company and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of this Hon'ble Court in Mahaamba Investment Limited vs. IDI Limited (2001) Company Cases 105 filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by Saurashtra Infra and Power Private Limited, Transferee Company was dispensed with vide order dated 26th June, 2015 passed in Company Summons for Direction No. 478 of 2015.

6. The Petitioner Company and Transferee Company have approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Advocate for the Petitioner further states that the Petitioner Company have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the Order passed in Company Summons for Direction.
8. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company through its Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.
9. The Official Liquidator has filed his report on 14th September, 2015 in Company Scheme Petition No. 523 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on 28th September, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

“6. That the Deponent further submits that:-

(a) Clause 11.6 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon’ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.”

11. As far as the observation made in paragraph 6(a) of the Regional Director is concerned, the Petitioner Companies undertake that the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standards.
12. As far as the observations made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.
13. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional

Director states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company is accepted.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 523 of 2015 is made absolute in terms of prayer clause (a), (b) and (d).
16. The Petitioner Company is directed to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.
17. The Petitioner Company is further directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable.
18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court, (O.S.), Bombay.

(S. C. Gupte, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by : Shankar Gawade, Stenogrpher